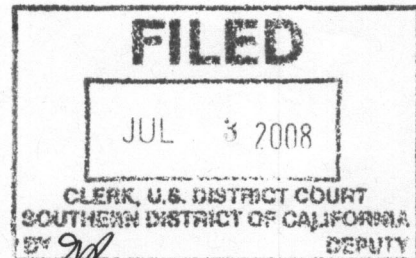


1 KAREN P. HEWITT  
 United States Attorney  
 2 MICHELLE M. PETTIT  
 Assistant United States Attorney  
 3 California State Bar No. 253406  
 United States Attorney's Office  
 4 Federal Office Building  
 880 Front Street, Room 6293  
 5 San Diego, California 92101  
 Telephone: (619) 557-7450  
 6  
 Attorneys for Plaintiff  
 7 UNITED STATES OF AMERICA



8 UNITED STATES DISTRICT COURT  
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

Magistrate Case No. 08MJ1887

11 Plaintiff,

12 **STIPULATION OF FACT AND JOINT**  
 13 **MOTION FOR RELEASE OF**  
 14 **MATERIAL WITNESS(ES) AND**  
 15 **ORDER THEREON**

13 v.

14 JULIO BAHENA-DE LA CRUZ,

15 Defendant.

(Pre-Indictment Fast-Track Program)

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
 17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
 18 Michelle M. Pettit, Assistant United States Attorney, and defendant JULIO BAHENA-DE LA  
 19 CRUZ, by and through and with the advice and consent of defense counsel, Michelle Betancourt,  
 20 Federal Defenders of San Diego, Inc., that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
 22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
 23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
 24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
 25 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
 26 § 1324(a)(1)(A)(i) and (v)(II).

27 //

28 MIP:psd



1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **July 21, 2008**.

6           4. The material witnesses, Eric Lopez-Lozano, Gerardo Coria-Ruiz and Fernando  
7 Armenta-Vargas, in this case:

8               a. Are aliens with no lawful right to enter or remain in the United States;

9               b. Entered or attempted to enter the United States illegally on or about  
10 June 18, 2008;

11              c. Were found in rural terrain near the international border with Mexico and  
12 were being guided by defendant, and defendant knew of the fact that they were aliens with no lawful  
13 right to enter or remain in the United States;

14              d. Were paying an unknown amount and \$1,800-\$2,000 to others to be brought  
15 into the United States illegally and/or transported illegally to their destination therein; and,

16              e. May be released and remanded immediately to the Department of Homeland  
17 Security for return to their country of origin.

18           5. After the material witnesses are ordered released by the Court pursuant to this  
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22               a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
23 substantive evidence;

24               b. The United States may elicit hearsay testimony from arresting agents  
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
27 of (an) unavailable witness(es); and,

28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Julio Bahena-De La Cruz



1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
7 further that defendant has discussed the terms of this stipulation and joint motion with defense  
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
10 immediate release and remand of the above-named material witness(es) to the Department of  
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT  
15 United States Attorney

16 Dated: 7/8/08.

17   
MICHELLE M. PETTIT  
Assistant United States Attorney

18 Dated: 6/25/08.

19   
MICHELLE BETANCOURT  
Defense Counsel for BAHENA-DE LA CRUZ

20  
21 Dated: 6/25/08.

22 X JULIO CESEAR BAHENA  
JULIO BAHENA-DE LA CRUZ  
Defendant



**ORDER**

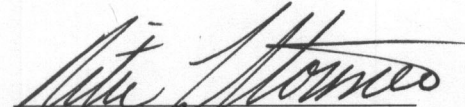
Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 7-3-08.

  
United States Magistrate Judge